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REMARKS

Claims 42-53 and 55-101 were previously pending in this application. By this amendment, Applicant is canceling claims 48, 55, 58, 60-81, 86-89, 91, 93, 95, 97, 99 and 101 without prejudice or disclaimer. Claims 57, 82, and 90 have been amended. New claims 102-103 have been added. As a result claims 42-47, 49-54, 56-57, 59, 82-85, 90, 92, 94, 96, 100, and 102-103 are pending for examination with claims 42, 44, 82, 90, 92, 94, and 96 being independent claims. No new matter has been added.

In response to the Restriction Requirement, Applicants have elected Group I directed to methods of treating asthma.

Claim Support

The amendment to claim 57 removes some sequences from the list but adds no new sequences.

The amendment of claim 82 removes the limitation to specific sequences and adds the limitation that the nucleic acid is 8-40 nucleotides in length and includes a 5'TC and comprises a nucleotide sequence GTCGTT (SEQ. ID. NO: 57). Support for the limitation that the nucleic acid includes a 5'TC and the limitation that the nucleic acid includes the sequence GTCGTT is found in the specification on at least page 38 lines 2-20. Support for the limitation that the immunostimulatory nucleic acid is 8-40 nucleotides in length is found on page 7 lines 35-37 and page 14 lines 33-34 of US Serial No. 08/738,652 (now, issued as US Patent No. 6,207,646 from which the above-identified patent application derives priority and which is incorporated by reference.

The amendment to claim 90 removes the limitation that the nucleic acid was derived from bacteria and added the limitation that at least one internucleotide linkage has a phosphate backbone modification and wherein the nucleic acid has 8 to 40 nucleotides. Support for these limitations is described above and below.

New claims 102 and 103 add the limitation that at least one internucleotide linkage of the nucleic acid has a phosphate backbone modification and that the modification is

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phosphorothioate, respectively. Support for these amendments is found on page 19 lines 1-4. Support is also found on page 16 lines 22-25 and page 39 lines 21-23 of US Serial No. 08/738,652 from which the above-identified patent application derives priority and which is incorporated by reference.

Interview Summary

On June 14 2004, attorney for applicants, Edward Gates, spoke with Examiner Minnifield regarding the status of the above-identified patent application. The above-identified patent application has been suspended for consideration of a potential interference. The patent office has not notified applicants of the identity of the patent or patent application for which the potential interference is being considered. Attorney for applicant sought guidance from the examiner regarding the disposition of the claims in view of the potential interference and also in view of a declared interference (105171).

Applicants wish to clarify certain remarks made in the Interview Summary. The present application contains claims directed to treatment of asthma and claims directed to desensitization treatment of allergy. The current interference (105171) involves desensitization treatment of allergy, and not treatment of asthma, as correctly indicated by the examiner. The Examiner, however, indicated incorrectly, that the allergy claims of the present application are in Interference 105171. These claims have not been added to that interference.

On June 17 2004, attorney for applicants, Helen Lockhart, spoke with Examiner Minnifield regarding the status of the above-identified patent application. Attorney for applicant notified the examiner that an IDS citing additional art and interference proceedings would be filed. The examiner notified attorney for applicant that she had decided to issue a restriction requirement, which would be mailed from the USPTO soon. The examiner also notified the attorney for applicant that a paper adding claim 71 related to the treatment of cancer originally submitted to the USPTO in connection with a different patent application had been mistakenly incorporated into the file history of the above-identified patent application. Within this amendment applicant has provided a complete listing of the pending claims.

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Comments Regarding Potential Interference

Applicants have been advised by the examiner that she is currently considering the pending asthma claims for an Interference. Applicants have not been told which patent or application would be the subject of such an interference. If the claims are being considered for an Interference with US Patent No 6,498,148 B1 issued on December 24, 2002, Applicants would like to bring to the Examiner's attention the fact that Applicants have specifically copied claims from this patent (and have so advised the Office in an amendment filed with the application) with the intention of attempting to provoke an interference. The copied claims appear in US Serial No. 10/743,625 which has not yet been assigned to an Examiner, to applicants knowledge.

Applicants would also like to bring to the Examiner's attention the fact that Applicants have specifically copied claims from a Published US Patent Application, Publication No. US 2003/0092663 A1, serial no. 10/229,208, filed August 26, 2002 (and have so advised the Office in an amendment filed with the application) with the intention of attempting to provoke an interference. US 2003/0092663 A1 derives priority from US Patent No 6,498,148 B1. Applicants copied claims appear in US Serial No. 10/847,642 having a filing date of May 17, 2004 which has not yet been assigned to an Examiner, to applicants knowledge.

This information will be formally provided in an Information Disclosure Statement, but applicants thought it important to specifically call this information to the examiner's attention at an early time.

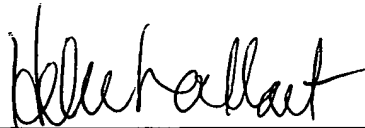
The currently pending claims are directed to the generic methods and are not limited to treatment with or without an antigen. The copied claims of US Serial No. 10/743,625 and the claims of US Patent No 6,498,148 B1 are limited to the species of treating asthma without the administration of an allergen/antigen.

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CONCLUSION

If the Examiner believes, after this amendment, that the application is not in condition for allowance, the Examiner is requested to call the Applicant's attorney at the telephone number listed below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'H. Lockhart', is written over a horizontal line.

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